

No response 8-3-92

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Employer Identification Number:

Date: JUN 30 1992

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure 1.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of

6/11/92 6-13-92 6-24-92 6-25-92 (acting)

[REDACTED]

attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

Enclosure I
Reasons for Adverse Action

You were incorporated on [REDACTED] under the laws of [REDACTED]. Your stated purposes are in pertinent part are:

"For charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and more specifically to promote the ecology and otherwise benefit the quality of life at [REDACTED], as well as those residential properties lying South of [REDACTED] between [REDACTED] and [REDACTED]."

Membership in your organization is limited to members who meet the following qualifications:

- a. One membership is offered to each residence located within Phase I, II, and III of [REDACTED].
- b. One membership is offered to each residence located South of [REDACTED] between [REDACTED] and [REDACTED].
- c. One membership is offered to [REDACTED] so long as they own at least one lot within Phase I, II, and III, of [REDACTED], or one lot South of [REDACTED] between [REDACTED] and [REDACTED].
- d. One membership is offered to non-resident lot owners within the above described areas.
- e. Such member to be in good standing must have paid his or her annual membership as well as any special assessment which has passed according to the By-Laws if [REDACTED].

The activities of your organization as stated on your application for exemption included a neighborhood watch, picnics for members, meetings, parties and social activities for members, and treatment of the [REDACTED]. You indicated in subsequent responses that you also provided for the maintenance of a park area, maintained the lighting at the entrances, landscaped and planted flowers at the entrances, as well as conducted a community crime watch.

You stated in a response we received on [REDACTED] that you maintained a grassy park area with access to the lake and that this park area included a sign "Private Property - No Access". You indicated in your letter dated [REDACTED] that "The Park is not owned by the [REDACTED] and that the [REDACTED] is owned by the owners of Phase I and Phase II of the [REDACTED] development".

The geographic area of your organization consists of approximately [redacted] homes surrounding the [redacted]. The only access to the lake is through the park area which you maintain. The general public is not permitted to use the park area or the lake.

[redacted] is accessible to members of your organization. The lake is surrounded only by individual property owners who meet the qualifications of membership as provided in your by-laws. You do not make access to the lake, or any of the activities of your organization open to the public.

The expenses of your organization include fund raising expenses, supplies relating to your social events, lake treatment, and other miscellaneous expenses.

Section 501(c)(4) of the Code provides, in part, for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements.

Rev. Rul. 74-99, 1974-1 C.B. 131, held that an organization to qualify as a homeowners association must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental. It must not conduct activities directed to the exterior maintenance of private residences and the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public. The Revenue Ruling, in reciting the areas and facilities owned and maintained by the organization, speaks only of "common green areas, streets, and sidewalks". The Revenue Ruling was, by the quoted phrases, designed to indicate that the only area and facilities encompassed were those traditionally recognized and accepted as being of direct governmental concern in the exercise of the powers and duties entrusted to governments to regulate community, health, safety and welfare. Thus the Revenue Ruling was intended only to approve ownership, and maintenance by a homeowners association of such areas as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners association.

Lake Petersburg Association v. Commissioner, 33 CCH Tax Ct. Mem.259 (1974) An organization was formed to construct a lake community in which it leased lots to members. The court concluded that the organization directly benefited only those people who were members and who therefore could enjoy the facilities and environment that

[REDACTED]

the lake provided and that the benefit to the local area to be indirect and remote. Therefore, the organization did not qualify for exemption under section 501(c)(4).

Commissioner v. Lake Forest, Inc. 305F 2d (814)(1962) held that a nonprofit corporation formed to acquire and operate a low cost housing cooperative that did not offer a program or service to benefit the community at large did not qualify for exemption under section 501(c)(4).

Based on the information submitted you are most similar to the organization described in Rev. Rul. 74-99, 1974-1 C.B. 131, since you are organized and operated to maintain common areas such as the grassy park area, the entrances, [REDACTED] and the lighting. However, the common areas are not open to the general public but restricted for use and enjoyment by members only.

Therefore, you do not qualify for exemption under section 501(c)(4) of the Code.

We also determined that you do not qualify under section 501(c)(7) of the Code since you were not organized substantially for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder. The maintenance of the park area, the lighting at the entrances, landscaping and planting flowers at the entrances, treatment of [REDACTED], as well as the community crime watch precludes exemption under section 501(c)(7) of the Code.

Department of the Treasury Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Prepare in duplicate
Duplicate to be filed
with the Service

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☒ Denial of exemption
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501(c)() to 501(c)(), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)(), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date